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FISCAL IMPACT STATEMENT

LS 7029
BILL NUMBER: HB 1360

NOTE PREPARED: Jan 20, 2008
BILL AMENDED:

SUBJECT: Mortgage Lending Issues.

FIRST AUTHOR: Rep. Bardon
FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

Homeowner Protection Unit- The bill requires the Homeowner Protection Unit (Unit) within the Attorney General's Office to establish a toll-free telephone number to receive calls from persons having information about suspected fraudulent transactions and practices concerning residential real estate transactions. The bill requires the Unit to share information reported by callers to the telephone number with appropriate law enforcement and regulatory agencies.

Revision of Sales Disclosure Form- The bill requires the Department of Local Government Finance (DLGF) to revise the sales disclosure form for real estate conveyances to include: (1) the application forms for the homestead credit and the mortgage property tax exemption; and (2) the name and license or certificate number of each regulated professional involved in the transaction.

Department of Insurance- The bill requires county assessors to submit sales disclosure form data to the Department of Insurance. The bill requires the Department of Insurance to establish and maintain a database that serves as a central repository for the sales disclosure form data submitted. The bill requires the Department of Insurance to make the information in the database available to appropriate law enforcement and regulatory agencies.

Closing Agent Responsibilities- The bill requires a closing agent to: (1) provide to a customer, at least 48 hours before the closing of a home loan transaction, a form prescribed by the Department of Local Government Finance that describes certain property tax deductions and credits; (2) require the customer, at the time of the closing, to complete and sign either a sales disclosure form, in the case of a first lien purchase money mortgage transaction, or the application form for the mortgage property tax exemption, in the case of a refinancing; and (3) collect and file the completed and signed form with the appropriate county official. The bill provides that at the time of the closing, the closing agent must: (1) inform the customer of certain other property tax deductions for which the customer may be eligible; (2) offer to provide the customer with the forms necessary for the person to claim the deductions; and (3) provide to the customer any forms requested by the customer.

Deduction for Certain Discharged Mortgage Debt – The bill for purposes of the Adjusted Gross Income Tax, excludes from a taxpayer's adjusted gross income an amount equal to the amount of any debt forgiven by a creditor with respect to mortgaged property of the taxpayer that is sold during the taxable year: (1) in a foreclosure proceeding; or (2) for an amount less than the amount of the outstanding mortgage obligation.

Education Tax Credit- The bill provides a credit against the Financial Institutions Tax or the Adjusted Gross Income Tax for a taxpayer that: (1) issues or brokers at least 25 home loans during the taxable year; and (2) incurs certain qualified home loan costs. The bill provides that the amount of the credit is the lesser of: (1) the taxpayer's qualified home loan costs; or (2) the amount of the taxpayer's tax liability.

Background Check- The bill specifies that evidence of compliance with the licensing and registration requirements for loan brokers, originators, and principal managers may include a national criminal history background check by the Federal Bureau of Investigation (FBI). The bill specifies that the Securities Commissioner (Commissioner) shall require each: (1) equitable owner of a loan brokerage business; (2) director, manager, or officer of an applicant for licensure as a loan broker; and (3) applicant for registration as an originator or a principal manager; to submit fingerprints for a national criminal history background check by the FBI. The bill prohibits the Commissioner from releasing the results of a national criminal history background check to a private entity.

Multistate Automated Licensing System- The bill allows the Commissioner to designate a multistate automated licensing system and repository (system) as the sole entity responsible for processing applications for: (1) licenses for loan brokers; and (2) certificates of registration for originators and principal managers.

Loan Broker Provisions- The bill increases the amount of the bond that a licensed loan broker must maintain with the Commissioner from $50,000 to $100,000. The bill eliminates the exemption from the loan broker statute for persons authorized to make loans on behalf of, or insured by, certain federal agencies. The bill specifies that a loan broker is subject to the state statute requiring disclosure of a breach of the security of any records: (1) maintained by the broker; and (2) containing the personal information of a borrower or prospective borrower. The bill prohibits loan brokers, originators, and principal managers from disposing of unencrypted, unredacted personal information with respect to borrowers or prospective borrowers without first taking certain actions to render the personal information illegible or unusable. The bill prohibits a person from performing specified acts in connection with a contract for the services of a loan broker.

UCCC Regulation- The bill provides that first lien mortgage transactions are subject to regulation under the Uniform Consumer Credit Code (UCCC).

Additional Provisions- The bill provides that not more than 25% of the credit service charge or loan finance charge for a mortgage transaction may be precomputed. The bill provides that for a first lien mortgage transaction, the parties may contract for a delinquency charge of not more than five percent (5%) of the contracted payment amount. The bill provides that prepayment penalties and fees may not be charged with respect to a subprime mortgage transaction. The bill requires a creditor or mortgage servicer to respond to a written offer made in connection with a proposed short sale of mortgaged property not later than 10 calendar days after the date of the offer. The bill provides that a creditor that offers a nontraditional or subprime mortgage transaction must exercise prudent underwriting practices to determine the debtor's reasonable ability to repay the mortgage transaction at its fully indexed rate. The bill requires a creditor that offers a subprime mortgage transaction to establish an escrow account for the payment of real estate taxes and insurance owed in connection with the subprime mortgage. The bill requires a person regularly engaged as a creditor in mortgage transactions to post a bond of at least $300,000 with the Department of Financial Institutions. The bill for an adjustable rate mortgage, requires a creditor to provide a one-page disclosure document that provides the following information: (1) The mortgage transaction's fully indexed rate. (2) The maximum monthly payment that could be required under the terms of the mortgage transaction, including amounts owed for taxes and insurance, if the creditor will establish an escrow account for taxes and insurance. The bill provides that a creditor is not liable to the debtor or any other person if the estimate of monthly taxes and insurance provided in the disclosure document differs from the actual taxes and insurance owed at any time during the mortgage.

Deceptive Acts- The bill specifies that a violation of the: (1) home loan practices act; or (2) the provisions of the UCCC concerning mortgage transactions; is a deceptive act subject to action by the Attorney General. For a deceptive act involving home loan practices or mortgage transactions, the bill increases: (1) the damages that may be awarded to an aggrieved consumer; and (2) the amount of the civil penalties that may be imposed on a violator.

Attorney General-Collected Civil Penalties- The bill provides that any civil penalties collected by the Attorney General shall be deposited in the home owner protection unit account in the General Fund.

Recommendation of Home Loan By Creditor- The bill prohibits a creditor from recommending or issuing to a prospective borrower: (1) a stated income or no documentation loan; or (2) a home loan if the creditor does not have reasonable grounds to believe the home loan is suitable for the prospective borrower based on a reasonable inquiry into the prospective borrower's creditworthiness. The bill provides that if a creditor conducts a reasonable inquiry, the creditor is not liable for determining that a home loan is suitable for a borrower, if the borrower later defaults on the home loan issued by the creditor.

Forbearance- The bill requires creditors to offer: (1) a temporary forbearance, subject to terms agreed upon by the creditor and the borrower; (2) a payment plan; or (3) an option for the refinancing, restructuring, or workout of existing indebtedness; whenever a home loan becomes 60 days past due.

48-Hour Advance on Closing Documents- The bill requires settlement service providers to make closing documents available to borrowers at least 48 hours before the closing.

Statutory Damages- The bill increases the statutory damages that may be recovered by a person aggrieved by a violation of the home loan practices act (act) from: (1) two times; to (2) four times; the amount of the finance charges under the contract.

Felony Penalty Provision- The bill enhances the crime involving a knowing or intentional violation of the act from a Class A misdemeanor to a Class D felony.

Civil Penalty- The bill increases the civil penalty for the violation of: (1) the act; or (2) an injunction issued to enjoin a violation of the act; from $10,000 to $20,000.

Background Check- The bill requires the Real Estate Appraiser Licensure and Certification Board to require each initial applicant for licensure or certification as a real estate appraiser to submit fingerprints for a national criminal history background check by the FBI. The bill prohibits the Board from releasing the results of a national criminal history background check to a private entity.

Certified Copy of Praecipe and Sale of Properties- The bill for a mortgage foreclosure proceeding initiated after June 30, 2008, requires: (1) the clerk of the court to certify to the sheriff a copy of the judgment or decree not later than five business days after the praecipe is filed; and (2) the sheriff to conduct a sale of the property not later than 90 days after receipt of the judgment or decree.

Task Force- The bill requires various state agencies to form the mortgage lending and fraud prevention task force to coordinate the state's efforts to: (1) regulate the various participants involved in originating, issuing, and closing home loans; (2) enforce state laws and rules concerning mortgage lending practices and mortgage fraud; and (3) prevent fraudulent practices in the home loan industry and investigate and prosecute cases involving mortgage fraud.

Indiana Housing and Community Development Authority (IHCDA) Report- The bill requires the IHCDA to provide, not later than November 1, 2008, a report to the Legislative Council that includes the following: (1) An identification of new and existing funding sources that can be used to assist Indiana homeowners in refinancing their existing mortgage transactions, in order to prevent the foreclosure of the homes secured by the mortgages. (2) A plan for the rehabilitation of areas in Indiana that have been adversely or disproportionately affected by mortgage foreclosures.

Department of Financial Institutions (DFI), Securities Division Cooperation- The bill requires the Securities Commissioner and the Director of the Department of Financial Institutions to cooperate to determine the appropriate state agency or department to regulate a person subject to regulation, licensure, or registration under both the loan broker statute and the UCCC.

Repealers- The bill repeals provisions that exclude mortgage transactions from the UCCC. The bill makes conforming changes.

Effective Date: Upon passage; July 1, 2008; January 1, 2009.

Explanation of State Expenditures: *Homeowner Protection Unit (HPU)*- This provision would likely have a minimal impact on state expenditures. However, the Attorney General Consumer Protection Division already has a toll-free number. If that number were to meet the requirement of this provision, there would be no impact to the HPU. Generally, the cost of a toll-free call to a called entity is based the amount of usage of a toll-free number, the cost of the trunk lines to the entity, and possibly a monthly flat rate service charge. The Homeowner Protection Unit had approximately $3,600 in local phone service expenditures at the end of FY 2007.

Revision of Sales Disclosure Form- This provision would require the DLGF to revise State Form 46021 (sales disclosure) to include State Forms 43709 (mortgage deduction from assessed valuation) and 5473 (homestead standard deduction). The revision of the forms would be of minimal expense to the DLGF as all three forms are currently available electronically. This provision would be effective July 1, 2008.

Department of Insurance- The bill requires the Department of Insurance (DOI) to maintain a database of sales disclosure forms and make it available to various state entities, including the Homeowner Protection

Unit. Currently, the DLGF maintains this information in a statewide database. Assuming DOI and DLGF can establish an interagency agreement, this provision may only require minimal additional staff time on the respective agencies in order for this data to be distributed to the other entities specified in the bill.

Deduction for Certain Discharged Mortgage Debt & Education Tax Credit-

Department of State Revenue (DOR)- The DOR will incur additional expenses to revise tax forms, instructions, and computer programs to reflect the proposed home loan cost tax credit and mortgage debt deduction. The DOR's current level of resources should be sufficient to implement this change. This provision would be effective January 1, 2009.

Indiana Housing and Community Development Authority- The IHCDA would have to certify home ownership education efforts by taxpayers seeking the tax credit established by the bill for the cost of such education efforts. The IHCDA's current level of resources should be sufficient to carry out the certifications.

Background Checks- Additional national criminal background checks could require an increase in administrative time for the Indiana State Police Department (SPD) to complete. The impact to SPD time and expenditures would depend on the number of additional background checks ordered by the Director of the Department of Financial Institutions.

Multistate Automated Licensing System- The impact of the Multistate Automated Licensing System on Secretary of State expenditures will depend on the system used and the number of persons entered. The Securities Commissioner could place a reasonable processing fee on persons entered into the system. Access to a system maintained by a third party could reduce the amount of administrative time needed for the Securities Commissioner to investigate registrants. The Securities Commissioner would not be able to require a person exempt from broker licensure or registration to submit information or participate in the system.

UCCC Regulation- Department of Financial Institutions Responsibilities- Under the bill, the Department of Financial Institutions would be required to examine first mortgage lenders. Currently, the DFI only examines second mortgage lenders. Therefore, the DFI would be required to examine the holdings of first mortgage lenders including those second mortgage lenders that also make first mortgage loans. The impact of this provision on DFI expenditures and staff time is unknown as the number of potential lenders that would be regulated is unknown. The examination fees for the first mortgage lenders would be the same as other regulated lenders: $1,000 or a volume fee set by the DFI, depending on which is applicable.

As of July 2, 2007, the DFI had four vacancies worth $205,000 in salary. The DFI reverted $133,127 from their operating account at the end of FY 2007. The DFI's dedicated fund appropriation for FY 2008 is $8.5 M.

Felony Penalty Provision- State expenditures could increase if an offender is incarcerated in a state prison rather than in a local jail. However, any expenditure increase is likely to be small. A Class D felony is punishable by a prison term ranging between six months to three years or reduction to a Class A misdemeanor. The period of incarceration would depend upon mitigating and aggravating circumstances. If offenders can be housed in existing facilities with no additional staff, the marginal cost per offender for medical care, food, and clothing is approximately $1,825 annually, or $5 daily. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Deceptive Acts- The provision could increase actions taken by the Attorney General against persons committing a deceptive act under the Home Loan Protection Act.

Task Force- The Task Force would consist of appointees from the Office of Secretary of State (Securities Division), the Attorney General (Homeowner Protection Unit), the DFI, the Department of Insurance, the Indiana Real Estate Commission, and the Professional Licensing Agency via the Real Estate Appraiser Licensure and Certification Board. The Task Force would meet monthly to coordinate the state's efforts to regulate, enforce laws, and prevent fraudulent activities with respect to home loan matters.

The Task Force would report to the Legislative Council annually on their activities for the prior year relating to coordination efforts of home loan matters. Each agency involved may require additional administrative time to produce the required reports, as well as for meetings, including preparation, by the members of the Task Force. It is likely that each participating agency would be able to complete their administrative duties for the Task Force within existing resources. This provision has an effective date of upon passage.

IHCDA Report- The IHCDA would likely require an increase in their workload to complete the required report. The IHCDA should be able to complete the report within their existing level of resources.

Explanation of State Revenues: *Deduction for Certain Discharged Mortgage Debt* – It is estimated that this deduction could potentially reduce state revenue from the individual AGI Tax by at least $3.0 M to $3.5 M annually from mortgage debt discharged in foreclosure sales and included in the taxpayer's federal AGI. The funds affected would be the state General Fund (86%) and the Property Tax Replacement Fund (14%).

Additional Factors- The revenue loss could be higher than the above estimate due to the following factors:

(1) The annual number of foreclosure sales occurring in 2009 and after is higher than recent levels. The revenue loss estimate assumes 3,000 to 3,500 foreclosure sales based on 2007 totals.
(2) The debt amounts being forgiven by creditors on average are more than assumed for the revenue loss estimate. The revenue loss estimate assumes an average of $30,000 in debt forgiven on foreclosure sales.
(3) Mortgage debt is forgiven by creditors under circumstances other than foreclosure sales, such as short sales of homes prior to commencing foreclosure proceedings. The number of short sales transactions and other debt forgiveness that may occur is indeterminable.

Effective Date-The deduction would be effective at the beginning of 2009. Therefore, the reduction to state revenues would begin in FY 2010.

Deduction Description- The bill provides an AGI deduction for the amount of any debt forgiven by a creditor in a mortgage transaction for the principal residence of the debtor with respect to mortgaged property of the taxpayer that is sold during the taxable year in a foreclosure proceeding or for an amount less than the outstanding mortgage obligation. The deduction only covers the amount of debt forgiven that is included in the taxpayer's federal AGI.

Felony Penalty Provision- Currently under IC 24-9 (the state's Home Loan Practice Act), a violation of the Act constitutes a Class A misdemeanor. The bill would increase the penalty to a Class D felony. If new violations of the Act were to result in additional court cases and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class A misdemeanor is $5,000. However, any additional revenue would likely be small.

Background Checks- Persons required by the agencies under the bill to submit fingerprints for a national criminal background check would be required to pay all the costs involved for the check. A national criminal history background check costs a total of $39, $24 of which is given to the federal government. The remaining $15 is deposited into the state General Fund. Last year, the SPD processed approximately 615,000 *limited* criminal background checks.

UCCC Regulation- Civil penalties in existing law would be applied as remedies for violations of this provision. In addition the bill would add a new civil penalty that could be assessed at the discretion of the DFI for UCCC violations under the bill. The amount of the civil penalty could not exceed $10,000 per violation.

Attorney General-Collected Civil Penalties- General Fund revenues would increase to the Homeowner Protection Unit account if additional civil penalties are collected under this provision.

Felony Penalty Provision- More revenue to the Common School Fund could be collected if a larger criminal fine is assessed by the sentencing court. However, any increase in revenue is likely to be small. The maximum fine for a Class A misdemeanor is $5,000, while the maximum fine for a Class D felony is $10,000. Court fees for both misdemeanors and felonies are the same.

Civil Penalty- The maximum civil penalty that could be assessed for a violation of the Home Loan Practice Act would be doubled to $20,000. Current law provides for civil penalties for violation of an injunction against a violator of the Home Loan Practice Act, and civil penalties cannot exceed $10,000 per injunction violation.

Creditor Recommendations & Forbearance- For the provisions of the bill that fall under IC 24-9 (the state's Home Loan Practice Act), a violation of the Act constitutes a Class A misdemeanor. If violations of the new provisions of the bill (Inquiry of Creditworthiness, and Offering of Temporary Forbearance) were to result in additional court cases and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class A misdemeanor is $5,000. However, any additional revenue would likely be small.

Loan Broker Provisions- If fewer exemptions occur as a result of the bill there would be a reduction in revenue to the state. Currently, if an exemption is filed with the Securities Division, the fee for claiming an exemption is provided by statute at $400. As stated above, recently, the Securities Commissioner had 1,091 brokers on file without a registration from the Securities Division due to statutory exemption.

A violation of a loan broker statute currently constitutes a Class D felony. Under current law, a violation is a Class C felony for knowingly sending false documents or making false statements to the Securities Commissioner during an examination or investigation. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was $19,185 in FY 2007. (This does not include the cost of new construction.)

If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately $1,825 annually, or $5 daily, per prisoner. The average length of stay in DOC facilities for all Class D felony offenders is approximately ten months.

Education Tax Credit- The potential reduction in state AGI tax and FIT revenue as a result of this provision is indeterminable, but could be significant. Creditors could begin taking advantage of the proposed tax credit after December 31, 2008, with the first reduction in revenue beginning during the second half of FY 2009. The impact would depend on the total number of creditors certified by the IHCDA for their home ownership education efforts.

Background Information -

Potential Universe of Eligible Creditors- There are approximately 580 FIT taxpayers, of which 359 are domiciled in Indiana. As of January 2008, the Securities Commission reported there were 939 registrants that broker home loans. Since July 2007, there have been 145 home loan broker exemptions granted with 25 in process. A report released during the fall of 2007 by the DFI stated that the Securities Commissioner had 1,271 mortgage brokers registered and 1,091 brokers without a registration from the Securities Division due to statutory exemption.

Credit Details- The provision would allow qualified creditors to take a tax credit for the cost of certain home ownership education efforts conducted by the creditor against either their AGI tax or FIT liabilities. The nonrefundable tax credit would be for creditors who issue or broker at least 25 home loans during the taxable year. The tax credit is equal to the entire cost of: (1) home ownership education efforts conducted by the creditor and certified by the IHCDA; and (2) contributions by the creditor to the Mortgage Foreclosure Counseling and Education Program administered by the IHCDA. Qualified home ownership education efforts include the following:

(1) Educational materials that inform borrowers about the features of, and risks associated with, the home loan products offered by the creditor, or the responsibilities and costs associated with home ownership in general.

(2) Home ownership counseling services designed to assist borrowers in meeting their obligations under a home loan.

The tax credit may be claimed by individuals, corporations, and pass through entities. For passthrough entities, the credit may be claimed by shareholders, partners, or members in proportion to their distributive income from the passthrough entity. The credit is not refundable. A taxpayer may carry over excess tax credits, but excess tax credits may not be carried back. Since this provision is effective beginning in tax year 2009, the fiscal impact could potentially begin in FY 2009, if qualifying taxpayers adjust their quarterly estimated tax payments. Revenue from the corporate AGI tax and the FIT is distributed to the state General Fund. The revenue from the individual AGI tax is deposited to the state General Fund (86%) and the Property Tax Replacement Fund (14%).

Educational Material Costs- The IHCDA currently uses a threefold pamphlet for foreclosure education. The printing cost per pamphlet ranges from $0.08 to $0.10 depending on the quantity produced. The IHCDA's development costs for the pamphlet are estimated to be $5,000.

Explanation of Local Expenditures: *Felony Penalty Provision-* If an offender is sentenced to state prison rather than to a county jail, the costs to the county may be reduced. However, any cost reduction is likely to be small. The maximum term of imprisonment for a Class A misdemeanor is up to one year.

Explanation of Local Revenues: *Deduction for Certain Discharged Mortgage Debt* – Because the deduction would serve to decrease taxable income, counties imposing local option income taxes could potentially experience a decrease in revenue from these taxes. The decrease would vary depending the number of mortgages affected and the county tax rate.

Certified Copy of Praecipe and Sale of Properties- This provision could speed up sheriff sales of property. Any administrative costs for clerks to provide certified copies of a praecipe to sheriffs would be minimal.

State Agencies Affected: IHCDA; DOR; Office of the Secretary of State Securities Division; DFI; DOI; SPD.

Local Agencies Affected: Trial courts, local law enforcement agencies, county auditors; counties with local option income taxes.

Information Sources: Stephanie Reeve, IHCDA; Jeff Bush, Securities Commission, Office of the Secretary of State; *Report Pursuant to HEA 1717 on the Feasibility of the Regulation of Mortgage Brokers by the Indiana Department of Financial Institutions, November 1, 2007;* John Schroeder & Dave Larson, DFI, OFMA 2004 Corporate Tax database; Jim Atterholt, Commissioner, DOI; STATS Indiana, http://www.stats.indiana.edu/. U.S. Census Bureau, American Fact Finder. Realtytrac, national foreclosure database, http://www.realtytrac.com.

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